

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	IB Docket No. 02-324
International Settlements Policy Reform	)	
International Settlement Rates	)	IB Docket No. 96-261

**COMMENTS OF TELEFONOS DE MEXICO, S.A. DE C.V.**

Teléfonos de México, S.A. de C.V. ("Telmex") submits these comments in response to the Commission's proposal to remove the International Settlements Policy ("ISP") from 77 routes believed to be benchmark-compliant.<sup>1</sup> For the reasons set forth below, Telmex supports the Commission's proposal to eliminate the ISP on the U.S.-Mexico route.

As the Commission is aware, U.S.-Mexico regulatory policy in the telecommunications area has been the subject of considerable controversy over the last decade. Not only has the Commission rejected prior settlement rate agreements between Telmex and U.S. carriers,<sup>2</sup> but, while finding it is in the public interest to authorize Telmex's entry into the U.S. international long distance market, the Commission has been critical of domestic regulatory conditions in Mexico.<sup>3</sup> On February 13, 2002, the U.S. requested a WTO dispute resolution

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<sup>1</sup> First Report and Order at ¶ 29; *Commission Announces Pleading Cycle for Comments and Replies in Proceeding on Routes Believed To Be Benchmark-Compliant*, IB Docket Nos. 02-324, 96-261, Public Notice, DA 04-1585 (released May 28, 2004).

<sup>2</sup> See, e.g., *AT&T Corp., Southwestern Bell Communications Services, Sprint Communications Company L.P., Verizon Global Solutions Inc., Williams Communications LLC, WorldCom, Inc.*, IB Docket Nos. ISP-WAV-20020419-00014, ISP-WAV-20020522-00018, ISP-WAV-20020528-00019, ISP-WAV-20020729-00026, ISP-WAV-20020705-00022, ISP-WAV-20020322-00012, Order, DA 04-434 (released Feb. 20, 2004) (rejecting proposed rates for period March 1, 2002 through December 31, 2003); *Sprint Communications Company, L.P.*, IB Docket No. ISP-97-M-708, Memorandum Opinion and Order, DA 98-2401 (released Nov. 24, 1998) (rejecting proposed 1998-1999 rates).

<sup>3</sup> See, e.g., *Telmex/Sprint Communications, L.L.C. Application for Authority Under Section 214 of the Communications Act for Global Authority to Operate as an International Switched Resale Carrier*

panel to address certain Mexican restrictions on international telecommunications services.<sup>4</sup>

Among other things, the U.S. urged that Mexico's commitments under the WTO Basic Telecommunications Agreement required it to modify its International Long Distance Rules ("ILD Rules")<sup>5</sup> – Mexico's ISP – and to allow International Simple Resale ("ISR").

On April 2, 2004, the WTO panel released its report. The panel concluded, among other things, that elements of Mexico's ILD Rules violated Mexico's WTO commitments but that Mexico had not committed to permit ISR.<sup>6</sup> Thus, the panel found that the Mexican government had the right to prohibit the U.S. carriers' practice of engaging in bypass of the settlement rate regime. On June 1, 2004, the Dispute Settlement Body adopted the panel's report.<sup>7</sup>

Although Mexico has made clear that it does not agree with certain of the panel's conclusions, Mexico and the U.S. exchanged letters on June 1, 2004 resolving their dispute.<sup>8</sup> In the exchange of letters, Mexico has agreed to modify, within two months of the adoption of the WTO Panel's Report, the uniform settlement rate and proportionate return components of its ILD Rules and eliminate the requirement that the carrier with the greatest proportion of outgoing

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*Between the United States and International Points, Including Mexico, Order, Authorization and Certificate*, 12 FCC Rcd 17551 (1997); *Telmex/Sprint Communications, L.L.C., Order to Show Cause*, 13 FCC Rcd 24990 (1998).

<sup>4</sup> See Office of the United States Trade Representative, Press Release, "US Requests WTO Panel to Rule on Mexican Telecom Restrictions" (Feb. 13, 2002).

<sup>5</sup> Like the ISP, Mexico's ILD Rules require uniform settlement rates and proportionate return. They also require that the carrier with the greatest proportion of outgoing traffic to a particular country negotiate the settlement rate for that route on behalf of all Mexican carriers.

<sup>6</sup> See World Trade Organization, *Mexico – Measures Affecting Telecommunications Services*, Report of the Panel, WT/DS204/R (April 2, 2004). The panel circulated its report as an unrestricted document on April 2, 2004.

<sup>7</sup> See *id.* at cover page (noting that Dispute Settlement Body had 60 days to adopt report).

<sup>8</sup> See Exchange of Letters Between Amb. Eduardo Perez Motta of Mexico and Amb. Linnet F. Deily of the United States, *Mexico – Measures Affecting Telecommunications Services*, Report of the Panel, S/L/161 WT/DS204/7 (June 1, 2004). A copy of the exchange of letters is attached as Exhibit A hereto.

traffic to a country negotiate the rate for that country for all Mexican carriers.<sup>9</sup> In addition, Mexico has agreed to have in force, within 13 months of the adoption of the Report, regulations authorizing the resale of international switched long distance services.<sup>10</sup> The United States also expressly recognizes that Mexico will continue to prohibit ISR.<sup>11</sup> The letters provide that, upon Mexico's modification of its regulations, the U.S. and Mexico will notify the WTO that they have resolved their dispute.<sup>12</sup>

Thus, the U.S. has achieved exactly what it has been seeking from Mexico for years: the elimination of those aspects of the ILD Rules that are the equivalent of the ISP. The U.S. must now catch up to Mexico and do the same.<sup>13</sup> Moreover, the U.S.-Mexico route is clearly benchmark-compliant; settlement rates have been at or below the 19 cent benchmark rate since July 1, 1999 – six months before the benchmark took effect with respect to Mexico. Nor are there legitimate competitive concerns with respect to the route, as the U.S. has agreed that fulfillment of the obligations contained in the exchange of letters addresses its prior concerns.

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<sup>9</sup> *Id.* at ¶ 2.

<sup>10</sup> *Id.* at ¶ 3.

<sup>11</sup> *Id.* at ¶ 5.

<sup>12</sup> *Id.* at ¶ 6.

<sup>13</sup> In contrast to the FCC's approach, *see* First Report and Order at ¶ 47, Mexico has not reserved the ability to reimpose its ILD Rules.

For these reasons, the Commission should follow Mexico's lead and eliminate the ISP on the U.S.-Mexico route.

Respectfully submitted,

TELEFONOS DE MEXICO, S.A. DE C.V.

By: Teresa D. Baer  
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Teresa D. Baer  
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(202) 637-2200

June 28, 2004

## **EXHIBIT A**

## MISIÓN PERMANENTE DE MÉXICO ANTE LA OMC

Ginebra, a 1 de junio de 2004  
OF/OMC/034/03

Excmo. Srita. Linnet F. Deily  
Emabajadora  
Representante Permanente  
Misión Permanente de Estados Unidos ante  
la Organización Mundial del Comercio  
Route de Pregny 11  
1292 Chambesy  
Suiza

Estimada Embajadora Deily:

Durante los pasados días, las delegaciones de México y Estados Unidos (las "Partes") han venido conversando sobre una solución mutuamente convenida en relación con la diferencia México – *Medidas que Afectan a los Servicios de Telecomunicaciones* (WT/DS204/R). No obstante que México no coincide con la interpretación de sus compromisos contraídos en el marco de la Organización Mundial del Comercio (la "OMC"), tal como se dispone en las constataciones del Grupo Especial, México no ejercerá su derecho de apelar con fundamento en el artículo 16 del Entendimiento Relativo a las Normas y Procedimientos por los que se rige la Solución de Diferencias (el "ESD"), en virtud del siguiente acuerdo alcanzado por las Partes para cumplir con las recomendaciones del Grupo Especial.

1. Las Partes acuerdan que trece (13) meses constituye el plazo prudencial para cumplir con las recomendaciones del Informe, tal como se dispone en los párrafos 2 a 6 de esta carta.
2. Dentro de los dos (2) meses siguientes a la adopción del Informe, México pondrá en vigor una versión modificada de Reglas para Prestar el Servicio de Larga Distancia Internacional (las "Reglas LDI"). México eliminará completamente aquellos aspectos de las Reglas LDI vigentes que establecen el sistema de "tarifa de liquidación uniforme", el sistema de "retorno proporcional", y el requisito de que el operador con la mayor proporción de tráfico de salida a un país negocie la tarifa de liquidación en representación de todos los operadores mexicanos para dicho país. Por lo tanto, las nuevas Reglas LDI permitirán una negociación comercial competitiva de las tarifas de liquidación internacional.
3. Dentro de los trece (13) meses siguientes a la adopción del Informe, México pondrá en vigor Reglamentos que autoricen la emisión de permisos para la reventa de servicios conmutados de telecomunicaciones de larga distancia internacional. Dichos Reglamentos regularán a las comercializadoras establecidas en México y les permitirán comprar y revender dichos servicios de

## MISIÓN PERMANENTE DE MÉXICO ANTE LA OMC

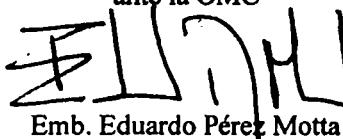
telecomunicaciones mediante el uso de capacidad de los concesionarios, dentro de los límites establecidos en los artículos 52 y 61 de la Ley Federal de Telecomunicaciones de México.

4. Las Partes anticipan que la negociación comercial competitiva de las tarifas de liquidación internacional, producto de la modificación de las Reglas de LDI descrita en el párrafo 2, resultarán en tarifas razonables y orientadas a costos.
5. Estados Unidos reconoce que México continuará prohibiendo la Reventa Internacional Simple (RIS).
6. Una vez que México cumpla con las obligaciones establecidas en los párrafos 2 y 3, así como sujeto a que las tarifas de liquidación internacional ofrecidas no se incrementen por encima de las tarifas acordadas en mayo de 2004 como resultado de las negociaciones comerciales concluidas entre los operadores estadounidenses y el operador mexicano autorizado conforme a las Reglas de LDI vigentes, las Partes notificarán al Órgano de Solución de Diferencias, que han alcanzado una solución mutuamente convenida de esta diferencia. Sujeto a que México haya cumplido con este acuerdo, Estados Unidos no interpondrá el recurso previsto en el artículo 21.5 del ESD, en relación con cualquier constatación o recomendación del Informe del Grupo Especial.

Las Partes consultarán periódicamente en relación con la implementación del presente acuerdo.

Tengo el honor de proponer que esta carta hecha en idiomas español e inglés, siendo cada texto igualmente auténtico, y su carta de confirmación en respuesta, constituirán un acuerdo entre nuestros dos gobiernos, efectivo a partir de la fecha de la carta de respuesta.

Atentamente,  
El Representante Permanente de México  
ante la OMC



Emb. Eduardo Pérez Motta

c.c.p.: Excmo. Emb. Sra. Amina Mohamed  
Presidente del Órgano de Solución de Diferencias. OMC

MISIÓN PERMANENTE DE MÉXICO ANTE LA OMC

*English version*

Geneva June 1, 2004  
OF/OMC/034/03

H.E. Ms. Linnet F. Deily  
Ambassador  
Permanent Representative  
Permanent Mission of the United States to  
The World Trade Organization  
Route de Pregny 11  
1292 Chambesy  
Switzerland

Dear Ambassador Deily:

Over the past several days, delegations of the United States and Mexico (the "Parties") have been discussing a mutually agreed solution of the dispute *Mexico – Measures Affecting Telecommunications Services* (WT/DS204/R). Notwithstanding the fact that Mexico does not share the interpretation of Mexico's World Trade Organization (the "WTO") commitments as set forth in the panel findings, Mexico will not exercise its right to appeal under Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU") in light of the following understanding reached by the Parties to comply with the recommendations of the panel report:

1. The Parties agree that thirteen (13) months constitutes a reasonable period of time to comply with the recommendations of the Report, as set forth in paragraphs 2 to 6 of this letter.
2. Within two (2) months of adoption of the Report, Mexico shall have in force revised International Long Distance Rules (the "ILD Rules"). Mexico shall completely eliminate those aspects of the current ILD Rules that implement the "uniform settlement rate" system, the "proportional return" system, and the requirement that the carrier with the greatest proportion of outgoing traffic to a country negotiate the settlement rate on behalf of all Mexican carriers for that country. Thus, the new ILD Rules shall allow the competitive commercial negotiation of international settlement rates.
3. Within thirteen (13) months of adoption of the report, Mexico shall have in force regulations (*Reglamentos*) authorizing the issuance of permits (*permisos*) for the resale of international long distance public switched telecommunications services. Such *Reglamentos* will regulate commercial agencies (*comercializadoras*) established in Mexico and permit them to

## MISIÓN PERMANENTE DE MÉXICO ANTE LA OMC

purchase and resell these telecommunications services through the use of capacity of concessionaires, within the limits established in Articles 52 and 61 of Mexico's Federal Telecommunications Law.

4. The Parties anticipate that the competitive commercial negotiation of international settlement rates resulting from the revisions of the ILD Rules described in paragraph 2 will result in reasonable and cost-oriented rates.
5. The United States recognizes that Mexico will continue to prohibit International Simple Resale (ISR).
6. Once Mexico has complied with the obligations set out in paragraphs 2 and 3, and provided that international settlement rates offered do not increase above the rates established by commercial negotiations concluded in May 2004 between United States carriers and the Mexican carrier authorized under the current ILD Rules, the Parties will file a notice with the Dispute Settlement Body stating that a mutually agreed solution to this dispute has been achieved. Provided that Mexico has complied with this agreement, the United States shall not seek recourse to Article 21.5 of the DSU, concerning any finding or recommendation of the panel report.

The Parties shall consult periodically regarding the implementation of this agreement.

I have the honor to propose that this letter done in the English and Spanish languages, both texts being equally authentic, and your letter of confirmation in reply shall constitute an agreement between our two Governments, effective as of the date of the letter in reply.

Att.

The Permanent Representative of  
Mexico to the WTO



Amb. Eduardo Pérez Motta

cc: H.E. Ms. Amina Mohamed  
Chairperson of the Dispute Settlement Body. WTO

PERMANENT MISSION OF THE UNITED STATES TO THE WORLD TRADE ORGANIZATION  
MISSION PERMANENTE DES ÉTATS-UNIS D'AMÉRIQUE  
AUPRÈS DE L'ORGANISATION MONDIALE DU COMMERCE

11, ROUTE DE PREGNY  
1292 GENÈVE.

1 de junio de 2004

H.E. Sr. Eduardo Pérez Motta  
Embajador  
Representante Permanente  
Misión Permanente de México ante  
la Organización Mundial del Comercio  
Avenue du Budé 16 (7 piso)  
1202 Ginebra  
Suiza

Estimado Embajador Pérez Motta:

Tengo el agrado de recibir su carta de fecha de hoy, la cual se lee como sigue:

“Durante los pasados días, las delegaciones de México y Estados Unidos (las “Partes”) han venido conversando sobre una solución mutuamente convenida en relación con la diferencia México – *Medidas que Afectan a los Servicios de Telecomunicaciones* (WT/DS204/R). No obstante que México no coincide con la interpretación de sus compromisos contraídos en el marco de la Organización Mundial del Comercio (la “OMC”), tal como se dispone en las constataciones del Grupo Especial, México no ejercerá su derecho de apelar con fundamento en el artículo 16 del Entendimiento Relativo a las Normas y Procedimientos por los que se rige la Solución de Diferencias (el “ESD”), en virtud del siguiente acuerdo alcanzado por las Partes para cumplir con las recomendaciones del Grupo Especial.

1. Las Partes acuerdan que trece (13) meses constituye el plazo prudencial para cumplir con las recomendaciones del Informe, tal como se dispone en los párrafos 2 a 6 de esta carta.
2. Dentro de los dos (2) meses siguientes a la adopción del Informe, México pondrá en vigor una versión modificada de Reglas para Prestar el Servicio de Larga Distancia Internacional (las “Reglas LDI”). México eliminará completamente aquellos aspectos de las Reglas LDI vigentes que establecen el sistema de “tarifa de liquidación uniforme”, el sistema de “retorno proporcional”, y el requisito de que el operador con la mayor proporción de tráfico de salida a un país negocie la tarifa de liquidación en representación de todos los operadores mexicanos para dicho país. Por lo tanto, las nuevas Reglas LDI permitirán una negociación comercial competitiva de las tarifas de liquidación internacional.

3. Dentro de los trece (13) meses siguientes a la adopción del Informe, México pondrá en vigor Reglamentos que autoricen la emisión de permisos para la reventa de servicios conmutados de telecomunicaciones de larga distancia internacional. Dichos Reglamentos regularán a las comercializadoras establecidas en México y les permitirán comprar y revender dichos servicios de telecomunicaciones mediante el uso de capacidad de los concesionarios, dentro de los límites establecidos en los artículos 52 y 61 de la Ley Federal de Telecomunicaciones de México.
4. Las Partes anticipan que la negociación comercial competitiva de las tarifas de liquidación internacional, producto de la modificación de las Reglas de LDI descrita en el párrafo 2, resultarán en tarifas razonables y orientadas a costos.
5. Estados Unidos reconoce que México continuará prohibiendo la Reventa Internacional Simple (RIS).
6. Una vez que México cumpla con las obligaciones establecidas en los párrafos 2 y 3, así como sujeto a que las tarifas de liquidación internacional ofrecidas no se incrementen por encima de las tarifas acordadas en mayo de 2004 como resultado de las negociaciones comerciales concluidas entre los operadores estadounidenses y el operador mexicano autorizado conforme a las Reglas de LDI vigentes, las Partes notificarán al Órgano de Solución de Diferencias, que han alcanzado una solución mutuamente convenida de esta diferencia. Sujeto a que México haya cumplido con este acuerdo, Estados Unidos no interpondrá el recurso previsto en el artículo 21.5 del ESD, en relación con cualquier constatación o recomendación del Informe del Grupo Especial.

Las Partes consultarán periódicamente en relación con la implementación del presente acuerdo.

Tengo el honor de proponer que esta carta hecha en idiomas español e inglés, siendo cada texto igualmente auténtico, y su carta de confirmación en respuesta, constituirán un acuerdo entre nuestros dos gobiernos, efectivo a partir de la fecha de la carta de respuesta."

Tengo el honor de confirmar que mi gobierno comparte el entendimiento referido en su carta hecha en idiomas español e inglés, siendo cada texto igualmente auténtico, y que su carta y esta carta en respuesta constituirán un acuerdo entre nuestros gobiernos, efectivo a partir de la fecha de esta carta.

Sinceramente,



Linnet F. Deily  
Embajadora

PERMANENT MISSION OF THE UNITED STATES TO THE WORLD TRADE ORGANIZATION  
MISSION PERMANENTE DES ÉTATS-UNIS D'AMÉRIQUE  
AUPRÈS DE L'ORGANISATION MONDIALE DU COMMERCE

11, ROUTE DE PREGNY  
1292 GENÈVE

June 1, 2004

H.E. Mr. Eduardo Pérez Motta  
Ambassador  
Permanent Representative  
Permanent Mission of Mexico to  
the World Trade Organization  
Avenue du Budé 16 (7 piso)  
1202 Geneva  
Switzerland

Dear Ambassador Pérez Motta:

I am pleased to receive your letter of today's date, which reads as follows:

"Over the past several days, delegations of the United States and Mexico (the "Parties") have been discussing a mutually agreed solution of the dispute *Mexico – Measures Affecting Telecommunications Services* (WT/DS204/R). Notwithstanding the fact that Mexico does not share the interpretation of Mexico's World Trade Organization (the "WTO") commitments as set forth in the panel findings, Mexico will not exercise its right to appeal under Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU") in light of the following understanding reached by the Parties to comply with the recommendations of the panel report:

1. The Parties agree that thirteen (13) months constitutes a reasonable period of time to comply with the recommendations of the Report, as set forth in paragraphs 2 to 6 of this letter.
2. Within two (2) months of adoption of the Report, Mexico shall have in force revised International Long Distance Rules (the "ILD Rules"). Mexico shall completely eliminate those aspects of the current ILD Rules that implement the "uniform settlement rate" system, the "proportional return" system, and the requirement that the carrier with the greatest proportion of outgoing traffic to a country negotiate the settlement rate on behalf of all Mexican carriers for that country. Thus, the new ILD Rules shall allow the competitive commercial negotiation of international settlement rates.
3. Within thirteen (13) months of adoption of the report, Mexico shall have in force regulations (*Reglamentos*) authorizing the issuance of permits

(permisos) for the resale of international long distance public switched telecommunications services. Such *Reglamentos* will regulate commercial agencies (*comercializadoras*) established in Mexico and permit them to purchase and resell these telecommunications services through the use of capacity of concessionaires, within the limits established in Articles 52 and 61 of Mexico's Federal Telecommunications Law.

4. The Parties anticipate that the competitive commercial negotiation of international settlement rates resulting from the revisions of the ILD Rules described in paragraph 2 will result in reasonable and cost-oriented rates.
5. The United States recognizes that Mexico will continue to prohibit International Simple Resale (ISR).
6. Once Mexico has complied with the obligations set out in paragraphs 2 and 3, and provided that international settlement rates offered do not increase above the rates established by commercial negotiations concluded in May 2004 between United States carriers and the Mexican carrier authorized under the current ILD Rules, the Parties will file a notice with the Dispute Settlement Body stating that a mutually agreed solution to this dispute has been achieved. Provided that Mexico has complied with this agreement, the United States shall not seek recourse to Article 21.5 of the DSU, concerning any finding or recommendation of the panel report.

The Parties shall consult periodically regarding the implementation of this agreement.

I have the honor to propose that this letter done in the English and Spanish languages, both texts being equally authentic, and your letter of confirmation in reply shall constitute an agreement between our two Governments, effective as of the date of the letter in reply."

I have the honor to confirm that the understanding referred to in your letter done in the English and Spanish languages, both texts being equally authentic, is shared by my Government, and that your letter and this letter in reply shall constitute an agreement between our two respective Governments, to enter into force on the date of this letter.

Sincerely,



Linnet F. Deily  
Ambassador